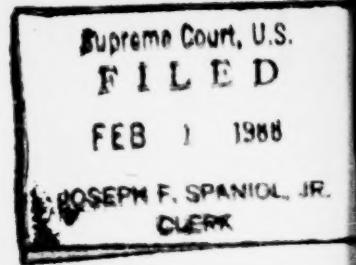


87-1291

No. _____



IN THE
Supreme Court of the United States
October Term, 1987

STEPHEN S. STOKWITZ,
Petitioner,

vs.

**UNITED STATES OF AMERICA,
DEPARTMENT OF THE NAVY OF
THE UNITED STATES OF AMERICA,
DEPARTMENT OF JUSTICE OF THE
UNITED STATES OF AMERICA,**
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JOHN W. PRAGER, JR.
Suite 300
801 Civic Center Drive
Santa Ana, California 92701
(714) 542-1883
Attorney for Petitioner

QUESTION PRESENTED

Do Sections 7431 and 6103 of the Internal Revenue Code, 26 U.S.C. §§7431 and 6103, prohibit a federal employee from disclosing the contents of a taxpayer's tax returns when the tax returns were obtained by the federal employee as a result of an unauthorized search and seizure of the taxpayer's personal effects rather than by release through the Internal Revenue Service?

LIST OF PARTIES TO PROCEEDING BELOW

Petitioner certifies that only the following were parties to the proceeding below:

Stephen S. Stokwitz,

United States of America;

Department of the Navy of
the United States of America;

Department of Justice of
the United States of America.

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OPINION, United States Court of Appeals for the
Ninth Circuit, No. 86-5883, Dated: February 4,
1987 A-1

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ORDER, United States District Court Southern
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No. _____

IN THE
Supreme Court of the United States
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STEPHEN S. STOKWITZ,

Petitioner,

vs.

UNITED STATES OF AMERICA; DEPARTMENT
OF THE NAVY OF THE UNITED STATES OF
AMERICA; DEPARTMENT OF JUSTICE OF THE
UNITED STATES OF AMERICA,

Respondents.

Petitioner, Stephen S. Stokwitz, respectfully prays that a Writ of Certiorari be issued to review the judgment and Opinion of the U.S. Court of Appeals for the Ninth Circuit filed in this proceeding on November 3, 1987.

STATUTORY PROVISIONS INVOLVED

The pertinent parts of the statutes involved are:

26 U.S.C. §7431

*Civil damages for unauthorized disclosure of
returns and return information.*

(a) *In general*—

(1) *Disclosure by employee of United States* —
If any officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information with respect to a taxpayer in violation of any provision of section

6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

* * *

(e) *Return, return information.* — For purposes of this section, the terms “return” and “return information,” have the respective meanings given such terms in section 6103(b).

26 U.S.C. §6103.

Confidentiality and disclosure of returns and return information.

(a) *General rule.* — Returns and return information shall be confidential, and except as authorized by this title —

(1) no officer or employee of the United States, shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section.

(b) *Definitions* — For purposes of this section —

(1) *Return* — The term “return” means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

OPINIONS AND ORDERS BELOW

The judgment and Opinion of the three-judge panel of U.S. Court of Appeals for the Ninth Circuit is styled *Stokwitz v. U.S.A.*, and is officially reported at 831 F.2d 893 (9th Cir. 1987). The Opinion is reprinted at Appendix A.

The Court of Appeals affirmed, in essential part, the Order of the U.S. District Court for the Southern District of California. That Order is reprinted herein at Appendix B.

JURISDICTION OF THE SUPREME COURT

The Opinion of the Court of Appeals was entered on November 3, 1987. No petition for rehearing, or for *en banc* consideration, was filed by Petitioner.

The U.S. Supreme Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1). This Petition for Writ of Certiorari is filed within 90 days of the entry of the Opinion of the Court of Appeals. See 28 U.S.C. §2101(c).

STATEMENT OF THE CASE

Factual Statement

The relevant facts were summarized by the Court of Appeals:

Petitioner, Stephen S. Stokwitz, was employed as a civilian attorney by the United States Navy at the Naval Ocean Systems Center ("NOSC"). His secretary and assistant gave a list of allegations of misconduct involving Stokwitz to his immediate supervisor. The supervisor requested a Naval Investigative Service ("NIS") inquiry.

Stokwitz was informed of the investigation, ordered to surrender his access badge, and escorted off NOSC property.

Shortly thereafter, Stokwitz's supervisor, his secretary, his assistant, and another NOSC employee, acting without a warrant or prior authorization, searched Stokwitz's office. They seized, and searched his briefcase. From it, they seized his personal copies of his federal and state tax returns for the years 1982 and 1983. The originals of his federal tax returns had been filed with the Secretary of the Treasury.

The seized copies of Stokwitz's federal tax returns were removed and "audited" by a NOSC employee. The returns and their contents were thereafter disclosed to other NIS agents, as well as other Navy employees.

Stokwitz was questioned about their contents. His employment was terminated the next day.

Following his discharge, Stokwitz initiated several lawsuits, including this action for damages, against the United States, the Department of Justice and the Department of the Navy, complaining that his tax returns and their contents had been disclosed in violation of the confidentiality provisions of 26 U.S.C. §7431 and 26 U.S.C. §6103.

The District Court's Decision

The District Court granted the Respondents' Motion For Summary Judgment. The District Court ruled that, as a matter of law, the non-disclosure provisions of 26 U.S.C. §7431; 26 U.S.C. §6103, applied only to the disclosure by the Internal Revenue Service ("IRS") of tax returns and return information received by the IRS from the taxpayer, and that such Sections did not forbid the disclosure of tax

returns or return information when such information is obtained directly from the taxpayer.

The statutory provision which was the basis for the District Court's jurisdiction in the first instance was 26 U.S.C. §7431(a).

The Court of Appeals' Decision

The Court of Appeals for the Ninth Circuit, insofar as is relevant to this Petition, affirmed the District Court.

The Court of Appeals concluded that Section 7431 and 6103 applied only to the tax returns and tax return information filed by and on behalf of the taxpayer, with the IRS, and does not interdict a federal employee's disclosure of such information when it is not obtained directly or indirectly from the IRS. Because Petitioner's tax returns were not obtained by the Navy employees from the IRS, but rather were obtained as a result of the warrantless search of Petitioner's briefcase, the Court of Appeals affirmed the District Court's Order granting the Government's Motion For Summary Judgment.

REASONS FOR GRANTING THE WRIT

INTRODUCTION

The Court of Appeals concluded that the confidentiality provisions of IRS Sections 7431 and 6103, 26 U.S.C. §§7431 and 6103, are not applicable to the disclosure of tax returns and tax return information obtained by a Government employee directly from the taxpayer. This conclusion is at odds with the plain language of those statutes.

The non-disclosure protection afforded by the statutory provisions is broader than that ascribed to it by the Court below. When the actual words of the Sections are read in

light of the Congressional purpose to protect the privacy of tax returns and tax return information, it is clear that Sections 7431 and 6103 protect tax returns and tax information from subsequent disclosure whenever that material comes into the Government's possession, unless the disclosure is in strict conformance with the elaborate mechanisms contained in IRC Sections 6103(c)-(q), 26 U.S.C. §6103(c)-(q).

The balance struck by Congress between (1) the interests of the taxpayer in the privacy of taxpayer's tax returns, and copies thereof, and related return information, and (2) the Government's need for legitimate use of that information as established by the provisions of 26 U.S.C. §6103(c)-(q), was incorrectly perceived by the Court of Appeals. The Court of Appeals' decision permits a federal employee to breach the Congressional assurances of privacy, confidentiality and non-disclosure contained in Section 6103 as long as the federal employee has obtained the information from sources other than the Internal Revenue Service ("IRS"). This construction of the statute is at odds with the Congressional assurances in Section 7431 and 6103 that the Government, whenever such material comes into its possession in any manner, will treat that information as confidential. If the statutory assurances of confidentiality are not applicable merely because a Government employee obtains the material as a result of a warrantless search of the taxpayer's personal effects rather than as a result of disclosure by the IRS, the Congressional policy of tax return confidentiality is undermined.

In short, the Court of Appeals' interpretation of Section 6103 ignores the plain language of that Section, as well as its legislative purpose. The Court of Appeals below, thus, rewrites the statute, and in doing so creates a loophole in the confidentiality assurances given taxpayers by Congress. It is

highly unlikely that Congress intended to create such a glaring loophole.

The Decision of the Court of Appeals adversely affects the millions of U.S. taxpayers who prepare and file tax returns under the compulsion of law, and who keep copies of those returns and related necessary tax return information, in order to explain their calculations in a subsequent IRS audit. According to the Court below, these materials may be seized by the Government, and if so obtained, are not entitled to the privacy protections of Section 6103.

This Court has not considered the question presented in this case. Since the factual setting herein presents an important question as to the meaning of the plain words of the statute, the statute's intent, and the scope of the confidentiality and non-disclosure prohibitions, this Court should take the opportunity now to decide this question. Moreover, the decision of the Ninth Circuit Court of Appeals in the instant case is in conflict with the decision of the Tenth Circuit Court of Appeals in *Rodgers v. Hyatt*, 697 F.2d 899 (10th Cir. 1983). In *Rodgers*, the Tenth Circuit affirmed a jury's damage award under 26 U.S.C. §7217 (now, 26 U.S.C. §7431), where the disclosed information was originally obtained by the Government from sources other than the IRS. This Court should resolve this conflict and determine the proper scope of the non-disclosure provisions of Sections 7431 and 6103.

**THE DECISION BELOW PRESENTS AN
IMPORTANT QUESTION OF FEDERAL
LAW WHICH HAS NOT BEEN AND
SHOULD BE DECIDED BY THIS COURT.**

**The Court of Appeals' Interpretation Of The
Scope Of Section 6103 Is At Odds With The
Plain Language Of The Statute.**

“Section 6103 of the Internal Revenue Code lays down a general rule that ‘returns’ and ‘return information’ as defined therein shall be confidential.” *Church of Scientology v. IRS*, — U.S. — , 98 L.Ed.2d 228, 232 (1987).

“It carries out two basic policy objectives. First, it assures taxpayers that the returns and information which they supply to the government in connection with the assessment and payment of taxes will not become public knowledge. I.R.C. §6103(a). Second, it provides for access to the information by persons who are deemed to have a material interest therein. I.R.C. §6103(e).” *Crown Cork & Seal Co. v. Pennsylvania Human Relations Commission*, 463 F.Supp. 120, 122-23 (E.D. Pa. 1979); accord, *Chamberlain v. Kurtz*, 589 F.2d 827 (5th Cir. 1979).

The words used in Section 6103(a) to set forth its purpose are unambiguous: “Returns and return information shall be *confidential*” (emphasis supplied). Likewise, the words in Section 6103(b) are clear: they define the term “return” as “. . . any tax or information . . . return . . . which is filed . . . with the Secretary” 26 U.S.C. §6103(b). In this case, it is beyond question that Petitioner’s copies of his tax returns which had been filed with the IRS, and which were seized by the Government in an unauthorized search, qualified for the protection afforded by Section 6103.

Section 6103(a) implements the Government’s confidentiality assurances to the taxpayer: the tax return

material will not be disclosed by any "... officer or employee of the United States ..." when it is obtained "in any manner" by that employee:

"in connection with his service as such an officer or an employee ...", or "otherwise", or "... under the provisions of this section [6103] ..."

These plain words reveal Congress' confidentiality scheme: The conduct of all Government employees — not just those employees employed by the Internal Revenue Service — is governed by this Section; all federal employees are required to treat whatever tax returns and return information they obtain as "confidential"; subsequent disclosure of that information by them is prohibited, unless it is excepted by other provisions of the Section, not only when the information has been obtained directly or indirectly from the IRS under the elaborate disclosure mechanisms contained in Section 6103, but also when the material is obtained from a source other than the IRS. *United States v. Art Metal — USA, Inc.*, 484 F.Supp. 884, 887 (D.N.J. 1980) (dicta); cf., *Rodgers v. Hyatt*, 697 F.2d 899 (10th Cir. 1983).

As shown above, the words used by Congress plainly contemplate that the tax return information which the Government employee is prohibited from disclosing may have come into possession of the Government originally by means other than its dissemination from the IRS under the exceptions to non-disclosure contained in Section 6103(c)-(q). Were that not the case, there would have been no purpose in Congress' use, when referring to how the employee obtains the information, of the words: "... in any manner ... in connection with his service as such an officer or an employee of the United States or otherwise ...". Those words would have been superfluous to the statutory scheme Congress intended. Congress could have chosen a shorter and more explicit way of expressing itself had this

been its desire. However, Congress did not do so. It should not be assumed that the legislative drafters purposely used awkward sentence structure in Section 6103. This Court has, heretofore, rejected such a thought. *Church of Scientology v. IRS*, — U.S. —, 98 L.Ed.2d 228 (1987). “Common sense” dictates that Congress did not intend the result envisioned by the Court below.

The interpretation given to Section 6103 by the Court of Appeals is, thus, at odds with the actual words of the statute. The Court of Appeals has implied that Congress did not mean what it said in Section 6103. Of course, it is not for the Court of Appeals, or this Court, to rewrite the statute. *cf.*, *St. Regis Paper Co. v. United States*, 368 U.S. 208, 82 S.Ct. 289 (1961).

Although it is the view of the Court of Appeals that Section 6103 applies only when the information subsequently disclosed has been originally obtained from the IRS, directly or indirectly, (Pet. Appendix A, n.4), since this conclusion is at direct odds with the plain meaning and words of the statute itself, this Court should review and reverse that conclusion.

The Legislative Purpose Behind The Confidentiality Provisions Of Section 6103 Is Undermined By The Decision Of The Court Of Appeals.

This Court has previously recognized the interests of persons compelled by the Government to furnish information to the Government. In *Boske v. Comingore*, 177 U.S. 459, 469-470, 20 S.Ct. 701, 705 (1900), this Court stated:

“the interests of persons compelled, under the revenue laws, to furnish information as to their private business affairs would often be seriously

affected if the disclosures so made were not properly guarded."

Since then, protections against improper Government disclosure of compelled information have been codified by Congress in a variety of federal statutes, including the Internal Revenue Code. *See, e.g., St. Regis Paper Co. v. United States*, 368 U.S. 208, 219, 82 S.Ct. 289, 296 (1961).

When Section 6103 of the Internal Revenue Code was amended by Congress in 1976, the amendments were designed to strengthen the previously-existing confidentiality provisions, as well as to tighten restrictions on the disclosure of information contained in a taxpayer's tax returns. *Church of Scientology v. IRS*, — U.S. —, 98 L.Ed.2d 228, 236 (1987). Indeed, Congress, in considering the 1976 amendments to the Internal Revenue Code contained in the proposed Tax Reform Act, acknowledged that the privacy interests of the American taxpayer warranted tighter restrictions on the disclosure of tax returns and related tax return information. The Conference Report of Congress provided:

"The Committee decided that the information that the American citizen is compelled by our tax laws to disclose to the Internal Revenue Service was entitled to essentially the same degree of privacy as those private papers maintained in his home." S.Rep. No. 938, 94th Congress, 2d Sess. 328, reprinted in 1976 *Code Cong. & Admin. News*, 3757.

This legislative purpose behind IRC Section 6103 leaves little room for doubt that Congress was persuaded that American taxpayers were not only entitled to continued assurance that their tax returns and related tax return information would be private and confidential (except when the legislative needs of the Government as set forth in the

exceptions to Section 6103 required disclosure,) but also were entitled to an expansion of those prior assurances. *See*, 122 *Cong. Rec* 24013 (1976) (remarks of Senator Weicker: "Each taxpayer should be confident that the filing of his or her tax returns in no way compromises the right of privacy").

Moreover, at the time of the passage of the 1976 Tax Reform Act, and the amendments to Section 6103, it was clear that the provisions of the Section, and the related provisions of Section 7217 (now 7431), prohibited divulging not only the contents of a taxpayer's actually-filed tax returns, but also the contents of copies of such returns which the Government obtains from the taxpayer, and not from or through the IRS. *Association of American Railroads v. United States*, 371 F. Supp. 114, 117 (D.D.C. 1974). As the Three-Judge Court, convened pursuant to 28 U.S.C. §2325, concluded in that case:

"It is clear that the purpose of this statutory protection [of Section 6103] would be meaningless if such protection were not extended to copies of tax returns and to the pertinent data and information in the hands of the taxpayer." *Id.* at 117.

Given the explicit privacy purpose behind the tightening of the disclosure provisions of Section 6103, it is evident that the Court of Appeals below has erred in giving that Section less of a scope than that suggested by Petitioner. The provisions of Section 6103 were designed to protect, and, in fact, protect, tax return and return information even though that information is not given by the taxpayer to the IRS. *Rodgers v. Hyatt*, *supra*. The interpretation given to the statute, and its language, by the Court of Appeals below would undermine the legislation's primary purpose of restricting Government disclosure, *Church of Scientology v. IRS*, *supra*, and would create a loophole in the statutory

scheme. Since one of the major aims of Congress in the 1976 Tax Reform Act was to guarantee the confidentiality of tax information in order to encourage full and honest reporting of income tax, *see*, S. Rep. No. 938, 94th Cong., 2nd Sess. 318, 1976 *Code Cong. & Admin. News* 3747, "... it is highly improbable that Congress intended such a result." *Connell Const. Co. v. Plumbers & Steamfitters, Local 100*, 421 U.S. 616, 632-633, 95 S.Ct. 1830, 1840 (1975). "Absent a clear indication that Congress intended to leave such a glaring loophole . . .," *Id.*, Section 6103 should not be so interpreted.

The Unauthorized Seizure of Petitioner's Tax Returns And The Disclosure of Their Contents Presents An Appropriate Factual Setting For This Court To Address The Extent Of The Protection Afforded By Section 6103.

The NOSC employees, here, obtained Petitioner's tax returns from his personal effects kept in the office where he had a reasonable expectation of privacy. *cf.*, *O'Connor v. Ortega*, — U.S. —, 107 S.Ct. 1492, 1 IER Cases 1617 (1987). The contents of those returns, as to which Petitioner also had an expectation of privacy when in the possession of the Government, *see Rodgers v. Hyatt, supra*, were disclosed without compliance with Section 6103's provisions.

The NOSC employee's unauthorized disclosure of the contents of Petitioner's tax returns violated the specific provisions of 26 U.S.C. §7431. Given this factual setting, the question presented to this Court is: do Sections 7431 and 6103 prohibit such disclosure even though the original source of the information disclosed was not the IRS? The Court of Appeals answered this question in the negative.

This Court has not considered this precise question before. It has, however, recently considered a related question as to the meaning of other provisions of Section 6103. *Church of Scientology v. IRS, supra*. There, this Court refused to adopt the position that Congress did not mean what it said in the plain words of Section 6103.

The facts, here, reveal the extent of our federal officials' refusal to live by the letter, if not the spirit, of the law. As Justice Black of this Court stated in *St. Regis Paper Co. v. United States*, 368 U.S. 208, 228, 82 S.Ct. 289, 300 (1961), concerning the extent of the respect of confidentiality assurances given our Government:

"It is no less good morals and good law that the Government should turn square corners in dealing with the people than that the people should turn square corners in dealing with their Government."

This Court should not countenance what occurred to Petitioner here. Because the facts in this case present a clear question, previously unanswered by this Court, as to the extent of the protection afforded by the confidentiality provisions of Section 6103, this Court should review and now decide the question presented.

**THE COURTS OF APPEAL FOR THE
NINTH AND TENTH CIRCUITS ARE IN
CONFLICT AS TO THE SCOPE OF THE
CONFIDENTIALITY PROVISIONS OF IRC
SECTION 6103**

Apparently, the Ninth Circuit is of the opinion that Sections 6103 and 7431 are applicable only when a Government employee obtains the information from the IRS. (Pet. App. A, p.12) That is not the interpretation given

to that Section by the Court of Appeals for the Tenth Circuit.

In *Rodgers v. Hyatt, supra*, this issue was presented to a jury, the District Court, and the Tenth Circuit Court of Appeals. There, the specific material which came into possession of the Government was "return information" as defined in Section 6103(b). The information was not obtained originally from the IRS. Rather, it came into possession of the Government through reports made by a Wyoming Sheriff, and by FBI officials. The Government official involved in the case, an IRS agent, disclosed the information so obtained. The Tenth Circuit made this clear in its decision:

"In the course of that meeting, Hyatt made reference to the [Sheriff's and FBI] allegations that Jim's Water Service, Inc. was rumored to be involved in stealing oil. Taxpayer alleged that Hyatt had violated the confidentiality provisions of §6103, *supra*, by disclosing this 'return information.' " *Id.*, at 900-901.

The Tenth Circuit affirmed an award of damages against the Government based upon this disclosure which was not otherwise authorized by the provisions of Section 6103.

Thus, the Tenth Circuit and the Ninth Circuit are in direct conflict as to the scope of the confidentiality and non-disclosure protection afforded by Sections 6103 and 7431. The Ninth Circuit would apply the protections of those Sections only where the information is obtained originally from the IRS. The Tenth Circuit would respect the confidentiality and non-disclosure assurance of this Government even though the tax material originally comes into the possession of the Government officials from a source other than the IRS.

Given this direct conflict between the Ninth and Tenth Circuit Courts of Appeals' interpretation of Section 6103, this Court should grant this Petition for Writ of Certiorari to review and consider the proper scope of the Congressional protection of a taxpayer's returns. *Cf., Church of Scientology v. IRS, supra*, n.3 (conflict in Circuit Court decisions as to the meaning of Haskell Amendment to Section 6103 warrants Supreme Court review).

CONCLUSION

The factual situation in the instant case presents an appropriate vehicle for this Court to decide the extent and meaning of the confidentiality assurances and non-disclosure promises made to American taxpayers in IRC Sections 6103 and 7431. The plain words of Section 6103, the legislative purpose behind its amendment in 1976, and the case precedents all show that Section 6103's protection was to be given a meaning broader than that ascribed to it by the Court of Appeals below. The broad assurances of confidentiality which Congress made to the taxpayer in those Sections should have been respected by the Court below. *St. Regis Paper Co. v. United States*, 368 U.S. 208, 227, 82 S.Ct. 289, 300 (1961) (Black, J., dissenting).

This Court should issue a Writ of Certiorari to review the Opinion and judgment of the U.S. Court of Appeals for the Ninth Circuit for the reasons set forth herein.

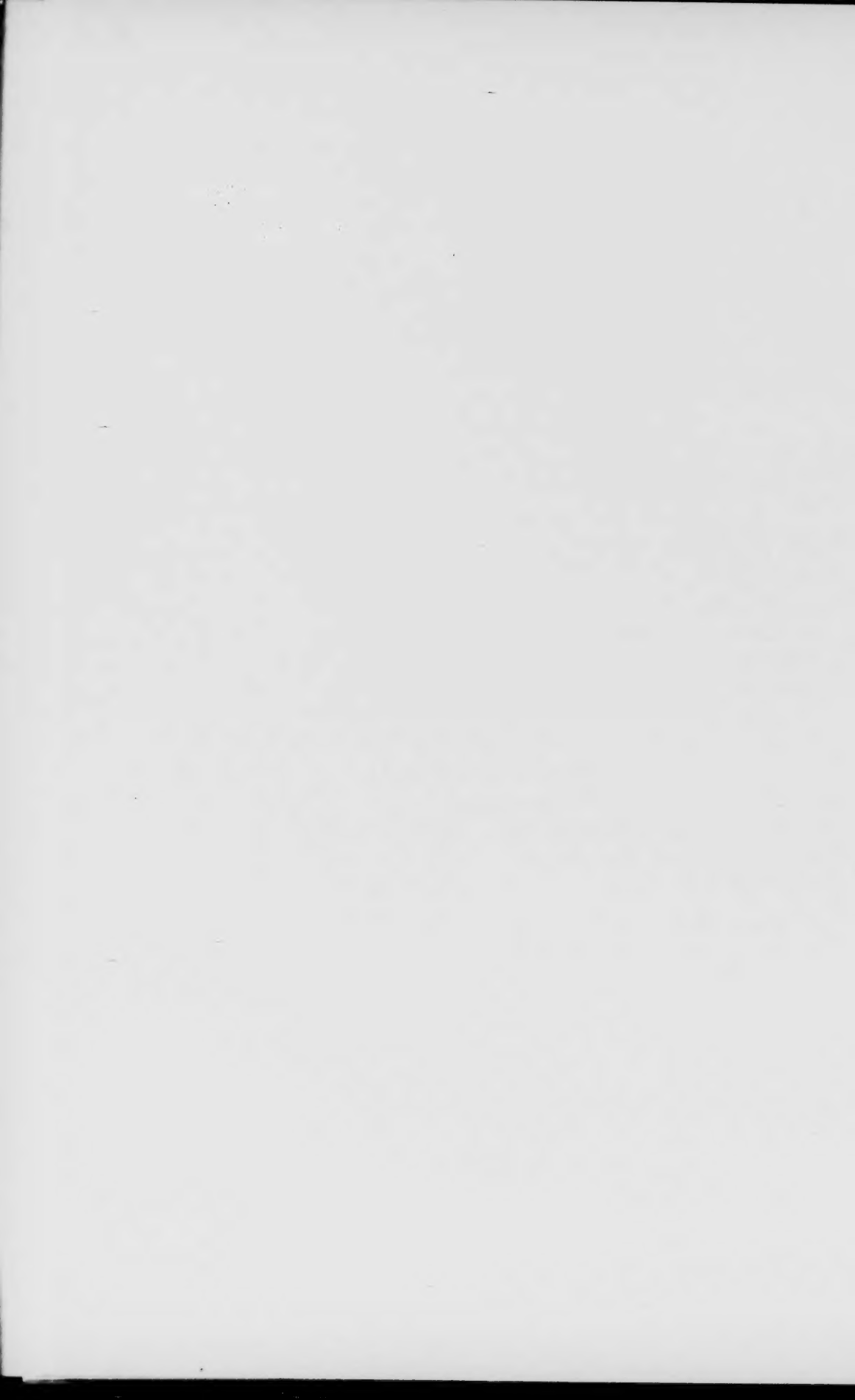
Dated: January 31, 1988

Respectfully submitted,

JOHN W. PRAGER, JR.

Attorney for Petitioner

APPENDIX A



A-1

No. 86-5883

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STEPHEN S. STOKWITZ,
Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE NAVY OF THE
UNITED STATES OF AMERICA,
DEPARTMENT OF JUSTICE OF THE
UNITED STATES OF AMERICA,
Defendants-Appellees.

D.C. No. CV 85-2450-GT

OPINION

Argued and Submitted
February 4, 1987 — Pasadena, California
Filed November 3, 1987

Before: James R. Browning, Chief Judge,
Thomas Tang and Stephen Reinhardt,
Circuit Judges

Opinion by Judge Browning

Appeal from the United States District Court
for the Southern District of California
Gordon Thompson, Jr., District
Judge, Presiding

OPINION

BROWNING, Chief Judge:

Stokwitz was employed as a civilian attorney by the United States Navy at the Naval Ocean Systems Center ("NOSC"). Stokwitz's secretary and assistant gave a list of allegations of misconduct involving Stokwitz to his immediate supervisor. The supervisor requested a Naval Investigative Service ("NIS") inquiry. Stokwitz was informed of the investigation, ordered to surrender his access badge, and escorted off NOSC property. Shortly thereafter, Stokwitz's supervisor, his secretary, his assistant, and another NOSC employee acting without a warrant or prior authorization, searched Stokwitz's office and briefcase. They seized several items, including Stokwitz's personal copies of his federal and state tax returns for 1982 and 1983, the originals of which had been filed with the Secretary of the Treasury.

The seized copies of Stokwitz's tax returns were audited by a NOSC employee and disclosed to various NIS agents and other Navy employees, and Stokwitz was questioned about their contents. His employment was terminated the next day.

Following his discharge, Stokwitz initiated several suits, including this action for damages under 26 U.S.C. §7431 against the United States, the Department of Justice and the Department of the Navy for disclosure of his tax returns in violation of 26 U.S.C. §6103.

The district court granted the government's motion for summary judgment on the ground that sections 6103 and 7431 applied only to disclosure of information received by the Internal Revenue Service (IRS) from the taxpayer, and not to disclosure of information obtained directly from the taxpayer by others.

The district court noted that section 7431 applied to disclosure of "return or return information" in violation of section 6103, and that the quoted terms had the same meaning in both statutes. One element of the definition of "return" was that it be "filed with the Secretary." 26 U.S.C. §6103(b)(1). Similarly, an element of the definition of "return information" was that it be "received by, recorded by, prepared by, furnished to, or collected by the Secretary." 26 U.S.C. §6103(b)(2).

The court found the information disclosed in this case was "obtained directly from the plaintiff in the course of a search of his work space at NOSC," and therefore was not "filed with" or "received etc." by the Secretary and subsequently disclosed either directly or indirectly by IRS employees to the Navy employees.

The court noted section 6103 was not enacted to prevent government employees from obtaining information from the taxpayer directly through such means as civil discovery or a search warrant; and stated it "was convinced that return and return information in the taxpayer's hands are subject to no greater protection than other private papers in taxpayer's possession." If the information was wrongfully obtained from the taxpayer by Navy employees, the court said, the appropriate remedy was the pending suit initiated by Stokwitz against these employees under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

The district court concluded that section 6103, and hence section 7431, were directed "at those government officers and employees who obtained returns and return information as a result of these materials being filed by or on behalf of taxpayer, or received by, furnished to, or collected by the Secretary."

We agree.

The statute must be read as a whole. *See United States v. Morton*, 467 U.S. 822, 828 (1984); *Moorhead v. United States*, 774 P.2d 936, 941 (9th Cir. 1985). Read in this way, section 6103 is clearly designed to protect the information flow between taxpayers and the IRS by controlling the disclosure by the IRS of information received from taxpayers.

[1] The legislative history of section 6103 indicates Congress's overriding purpose was to curtail loose disclosure practices by the IRS. Congress was concerned that IRS had become a "lending library" to other government agencies of tax information filed with the IRS, and feared the public's confidence in the privacy of returns filed with IRS would suffer. *See*, 122 Cong. Rep. 24013 (1976) (remarks of Sen. Weicker).¹ The Senate Report explained: "[T]he IRS probably has more information about more people than any other agency in this country. Consequently, almost every other agency that has a need for information . . . logically seeks it from the IRS." S. Rep.

¹ Senator Weicker said:

Over the years, a myriad of Government agencies have gained access to tax information of the IRS. Defacto, IRS became a lending library of confidential tax information. As the Privacy Commission noted, information the IRS maintained was treated as a "generalized governmental asset."

122 Cong. Rec. 24013 (1976).

No. 938, 94th Cong., 2nd Sess. 316-17, *reprinted in* 1976 Code Cong. & Admin. News 3746. Congress also sought to end “the highly publicized attempts to use the Internal Revenue Service for political purposes” involving delivery of tax returns to the White House by the IRS, *see* 122 Cong. Rec. 24013 (1976) (Remarks by Sen. Dole); and to regulate “the flow of tax data from the IRS to State Governments . . .” *Id.* (remarks of Sen. Weicker). In short, section 6103 was aimed at curtailing abuse by government agencies of information filed with the IRS. *See* S. Rep. No. 938, 94th Cong., 2nd Sess. 318-19, 345, *reprinted in* 1976 Code Cong. & Admin. News 3774-75; *see also* *Chamberlain v. Kurtz*, 589 F.2d 827, 835 (5th Cir. 1979).

At the same time, Congress realized tax information on file with the IRS was often important to other government agencies. Revised section 6103 represents a legislative balancing of the right of taxpayers to the privacy of tax information in the hands of the IRS and the legitimate needs of others for access to that information. *See United States v. Bacher*, 611 F.2d 443, 446 (3rd Cir. 1979).

[2] Consistent with the legislative history, the elaborate disclosure procedures of section 6103 are directed to controlling the distribution of information the IRS receives directly from the taxpayer — information the taxpayer files under compulsion and the threat of criminal penalties. *See* S. Rep. No. 938, 94th Cong., 2nd Sess., 328 *reprinted in* 1976 Code Cong. & Admin. News 3757. Section 6103 establishes a comprehensive scheme for controlling the release *by the IRS* of information received from taxpayers to discrete identified parties, subject to specified conditions.² As the district court noted, the statutory

² Virtually all of the sections of §6103 involve disclosures authorized by the Secretary of the Treasury, i.e., the IRS. Subsection (c) permits disclosure by “the Secretary” to persons designated by the taxpayer.

definitions of "returns" and "return information" to which the entire statute relates, confine the statute's coverage to

Subsection (d) opens tax information to specialized state agencies for certain purposes, but provides the information shall not be disclosed to the extent "the Secretary" determines disclosure would identify a confidential informant or impair an investigation. Subsection (e) provides that a return may be disclosed to certain identified persons having a material interest; when the disclosures are conditioned upon a finding, the finding is to be made by "the Secretary." *See, e.g.*, (1)(D)(vi), (E)(ii), (F)(ii), (3)(D), (4), (6). Subsection (f) provides that "the Secretary" shall furnish returns and return information to identified committees of the Congress. Subsection (g) provides that returns or return information shall be provided to the President by "the Secretary"; "the Secretary" may also disclose return information to an authorized representative of the Executive Office and the President or the head of any federal agency under certain circumstances, and "the Secretary" shall notify the individual of the disclosure. Subsection (h) authorizes "the Secretary" to make disclosure to certain officers and employees for purposes of tax administration "if the Secretary" has referred the case to the Department of Justice for prosecution, or "if the Secretary" receives a written request from named officials at the Department of Justice. Subparagraph (i) provides for disclosure on court order in certain nontax criminal investigations, but provides "the Secretary" shall not make such disclosure if he determines it would identify an informant or impair an investigation. "The Secretary" may disclose return information that may constitute evidence of violation of federal criminal laws. The information shall not be disclosed or admitted in evidence if "the Secretary" determines a confidential informant will be identified or an investigation impaired. Subsection (g) provides that "the Secretary" shall furnish returns and return information for statistical use under certain circumstances. Subparagraph (k) allows the disclosure of returns and return information for various tax administrative purposes, and where appropriate identifies "the Secretary" as the authority authorized to make the release. Subparagraph (l) provides for disclosure of returns for various purposes with the same recognition of "the Secretary" as the acting authority (sections (1), (2), (3), (4), (5), (6)). Subsection (m)

information that is passed through the IRS.³ The companion Treasury regulations, similarly, are exclusively concerned with disclosure by the IRS. *See* Treas. Regs. §§301.6103(a)-1 to (p)(7)-1 (1986).

That is as far as the statute goes. Contrary to appellant's contention, there is no indication in either the language of section 6103 or its legislative history that Congress intended to enact a general prohibition against public disclosure of tax information.

provides that "the Secretary" may disclose taxpayer identity information, and taxpayer's mailing address for specified purposes. Subparagraph (n) provides that "the Secretary" will prescribe regulations for the disclosure of returns and return information for processing, storage, etc. Subsection (p) provides the procedures and recordkeeping for all disclosures permitted by the section. Requests of Inspections, and disclosures are to be made in a manner and time and place prescribed by "the Secretary." Disclosure is to be in the form "the Secretary" determines necessary or appropriate; "the Secretary" is to maintain a system of records of requests for inspection of disclosures. "The Secretary" is also to furnish the Congress with a report of such requests, inspections and disclosures. Any agency receiving inspections or disclosures from the Secretary is to establish and maintain "to the satisfaction of the Secretary" appropriate records, and maintain to "the Secretary" secure storage, restrict "to the satisfaction of the Secretary" access to the information, provide such other safeguards as "the Secretary" determines to be necessary, furnish a report "to the Secretary", and "return to the Secretary" such returns or return information" that have been disclosed. "The Secretary" is to report to the Congress the procedures and safeguards established for the security of returns and return information furnished under the §4102(g). Subsection (g) authorizes "the Secretary" to prescribe any other necessary regulations.

³ Subsection (a) declares that "returns and return information" shall be confidential and shall not be disclosed except as authorized by section 6103, and subsection (b) defines these terms as limited to material filed with or received by "the Secretary." 26 U.S.C. §6103(a).

[3] Appellant relies upon subsection (a), the general confidentiality provision of section 6103, pointing out that it prohibits disclosure by an employee of the United States "of any return or information *obtained in any manner*" (emphasis added). Focusing on this phrase alone, however, ignores the central fact evident from the legislative history, structure, and language of section 6103 (including the definitions of "return and return information") that the statute is concerned solely with the flow of tax data to, from, or through the IRS.⁴

Appellant relies upon dictum in *Association of American R.Rs. v. United States*, 371 F.Supp. 114, 117 (D.D.C. 1974) that the purpose of the protection afforded tax data by sections 6103 and 7213 "would be meaningless if such protection were not extended to copies of tax returns and to the pertinent data and information in the hands of the taxpayer."⁵ It is quite clear, however, that this was not Congress's view when it revised section 6103. Thus, for example, the Senate report expressly disclaimed any intention "to limit the right of an agency (or other party) to obtain returns or return information directly from the taxpayer through the applicable discovery procedures," (S. Rep. No. 938, 4th Cong., 2nd Sess. 330, *reprinted in* 1976 U.S. Code Cong. & Admin. News 3759; *accord* *United*

⁴ We do not agree with the statement in the District Court's order, however, that section 6103 applies only to IRS employees. Section 6103 applies to all who receive information from the IRS, directly or indirectly.

⁵ Appellants also cite *United States v. Sapp*, 371 F.Supp. 532 (S.D. Fla. 1974), but the opinion does not indicate anything was made of the fact (disclosed in passing) that the tax data involved was in the possession of the taxpayer's accountant. Under either the present or prior version of section 6103, the Department of Justice could have obtained taxpayer's return directly from IRS for presentation to the grand jury.

States v. Art Metal-U.S.A., Inc., 484 F.Supp. 884, 887 (D.N.J. 1980)), and courts generally have held the restrictions of section 6103 inapplicable to discovery of tax data in the hands of the taxpayer. *See, e.g., Heathman v. District Court*, 503 F.2d 1032, 1035 (9th Cir. 1974).

[4] Appellants argue a broader interpretation is necessary to achieve Congress's goal of guaranteeing the confidentiality of tax information in order to encourage full and honest reporting of income tax. *See* S. Rep. No. 938, 94th Cong., 2nd Sess. 318, *reprinted in* 1976 Code Cong. & Admin. News 3747; *Church of Scientology of Cal. v. IRS*, 792 F.2d 153, 158-59 (D.C.Cir. 1986) (en banc), *cert. granted*, 107 S.Ct. 947 (1987). But Congress intended only, in the words of Senator Weicker, that "[e]ach taxpayer should be confident that *the filing of his or her tax returns* in no way compromises the right of privacy." 122 Cong. Rec. 24013 (1976) (emphasis added). Nothing in the statute or its legislative history suggests an intention to protect a taxpayer's financial data from any potential risk of disclosure except that arising from the filing of the taxpayer's return with the IRS.

[5] Appellant's interpretation would also render the statute excessively burdensome. Section 6103 would become the sole means by which the government could obtain tax information legitimately. If a government employee obtained tax information directly from the taxpayer, through discovery or a subpoena, or in any other appropriate way, and subsequently disclosed that information, the government would be subject to criminal and civil penalties. Government employees could protect themselves only by securing the information through the cumbersome procedures of section 6103. Section 6103 was not designed to provide the only means for acquiring such information from the IRS.

[6] This is not to say that appellant has no remedy for the alleged unlawful seizure and subsequent use of his tax information. Those issues can be addressed in Stokwitz's *Bivens* action, or through any other applicable tort action. The confidentiality of tax information may also be preserved in civil proceedings through protective orders. See *Premium Service Corp. v. Sperry Hutchinson Co.*, 511 F.2d 225, 229 (9th Cir. 1975).

Since section 6103 applies only to information filed with and disclosed by the IRS, and Stokwitz's tax returns were not obtained directly or indirectly from the IRS, we affirm.

AFFIRMED.

APPENDIX B



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEPHEN S. STOKWITZ,
Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,
Defendants.

Civil No. 85-2450-GT(CM)

ORDER

On Monday, February 24, 1986, at 10:30 a.m., the defendants' motion to dismiss or for summary judgment came on for hearing before the Honorable Gordon Thompson, Jr. The plaintiff, STEPHEN S. STOKWITZ, was represented by Emory Boutilier. The defendants were represented by Assistant United States Attorney John Neece.

BACKGROUND

The plaintiff, STEPHEN S. STOKWITZ, was Command legal Counsel for the Naval Ocean Systems Center (NOSC), a high security weapons and communications research and development complex under direct military command. Plaintiff was terminated on October 10, 1984.

On December 5, 1984, plaintiff filed a complaint for injunctive relief seeking reinstatement, or in the alternative, a name clearing hearing. On January 22, 1985, plaintiff filed an amended complaint seeking damages under an

assortment of legal theories. This Court granted summary judgement against plaintiff on all claims except a *Bivens*-type cause of action arising from a search of a plaintiff's work space at NOSC.

On October 9, 1985, plaintiff filed the above-captioned case. The claim for relief also rises out of the search of the plaintiff's work space at NOSC. In the course of that search, plaintiff's federal tax returns for 1982 and 1983 along with some tax return information were discovered. These returns and the return information were seized and reviewed by certain Navy employees.

Plaintiff filed the above-captioned case pursuant to the provisions of 26 U.S.C. §7431. Under section 7431,

[i]f any officer of the United States knowingly, *or by reason of negligence*, discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States

26 U.S.C. §7431 (a)1. For purposes of section 7431, " "return", and "return information" have the respective meanings given each terms in section 6103(b)". 26 U.S.C. §7431(e).

Prior to the enactment of section 6103, tax returns and return information in the possession of the Internal Revenue Service were considered public records. In response to mounting criticism, congress enacted section 6103 to ensure that the vast amount of personal information collected by the Internal Revenue Service would be kept confidential. The statute established extensive procedures for government employees who desired to obtain return or return information from the Internal Revenue Service.

Section 6103 contains a general prohibition against disclosure which provides:

- (1) no officer or employee of the United States, . . . shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section.

26 U.S.C. §6103(a)(1). For purposes of section 6103,

[t]he term "return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title *which is filed with the Secretary by, on behalf of, or with respect to any person*

26 U.S.C. §6103(b)1 (emphasis supplied). For purposes of section 6103,

[t]he term "return information" means - (a) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, *received by, record by, prepared by, furnished to, or collected by the Secretary with respect to a return*

26 U.S.C. §6103(b)(2)(A) (emphasis supplied). For purposes of section 6103,

[t]he term "taxpayer return information" means return information as defined in [§6103 (b)(2)] . . . *which is filed with, or furnished to, the Secretary by or behalf of the taxpayer to whom such return information relates.*

26 U.S.C. §6103(b)(2) (emphasis supplied).

FINDINGS

After careful consideration of the papers submitted to the Court, together with the arguments presented at the hearing, the Court finds:

First, there is no allegation in the above-captioned case that the "return" was "filed with the Secretary by, on behalf of, or with the respect to" the plaintiff. There is no allegation in the above-captioned case that the "return information" was "received by, recorded by, prepared by, furnished to, or collected by the Secretary." Finally, there is no allegation that the "taxpayer return information" was "filed with, or furnished to, the Secretary by or on behalf of" the plaintiff. In fact, it is beyond dispute that the return and return information were obtained in the course of a search of the plaintiff's work at NOSC.

Second, as matter of law, 26 U.S.C. §6103 was not enacted to prevent government employees from obtaining return or return information from the taxpayer directly through such means as civil discovery or a search warrant directed at the taxpayer. The Court is convinced that return and return information in the taxpayer's hands are subject to no greater protection than other private papers in the taxpayer's possession. If the return and the return information were unlawfully obtained from the plaintiff, that issue will be resolved in plaintiff's pending *Bivens*-type action.

Third, despite this Court's finding that the return and return information were not material filed by or on behalf of the taxpayer, or furnished to, received by, or collect by the Secretary, and despite this Court's finding that section 6103 is not a bar to a government agency with investigatory powers to obtain return or return information directly from the taxpayer, the plaintiff still contends that once Navy employees obtained the returns and return information,

they became subject to the prohibition against disclosure contained in 26 U.S.C. §6103(a)(1). This Court finds such an interpretation untenable.

The prohibition in section 6103 is directed at those government officers and employees who obtain returns and return information as a result of these materials being filed by or on behalf of the taxpayer, or received by, furnished to, or collected by the Secretary. It seems anomalous to the Court that government employees, for example, a United States Attorney who receives the return or return information through civil discovery or a representative of the Federal Deposit Insurance Corporation who receives return or return information while conducting a review of the financial condition of a member bank, should be required to follow the extensive procedures outlined in section 6103 before being allowed to turn such materials over to accountants or economists who are assisting them in their review. It is the Court's opinion that the scope of section 6103 is far more limited.

The Court thus finds that the facts, as alleged by the plaintiff, are insufficient to state a claim against the defendants under 26 U.S.C. §6103 and 7431. The Court expresses no opinion concerning whether the disclosures alleged would constitute a violation of section 6103 if that section had been found applicable to the case at bar.

Accordingly, the defendants' motion for summary judgment granted.

IT IS SO ORDERED

Dated: March 4, 1986

s/s Gordon Thompson, Jr., Chief Judge
United States District Court

cc: John Neece, AUSA

Emory Boutilier, Esq.
Scripps Corporate Plaza
10680 Trenea Street, Suite 440
San Diego, CA 92131-2446

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No. 87-1291

Supreme Court, U.S.

FILED

APR 8 1988

JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1987

STEPHEN S. STOKWITZ, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

CHARLES FRIED
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8/10/88

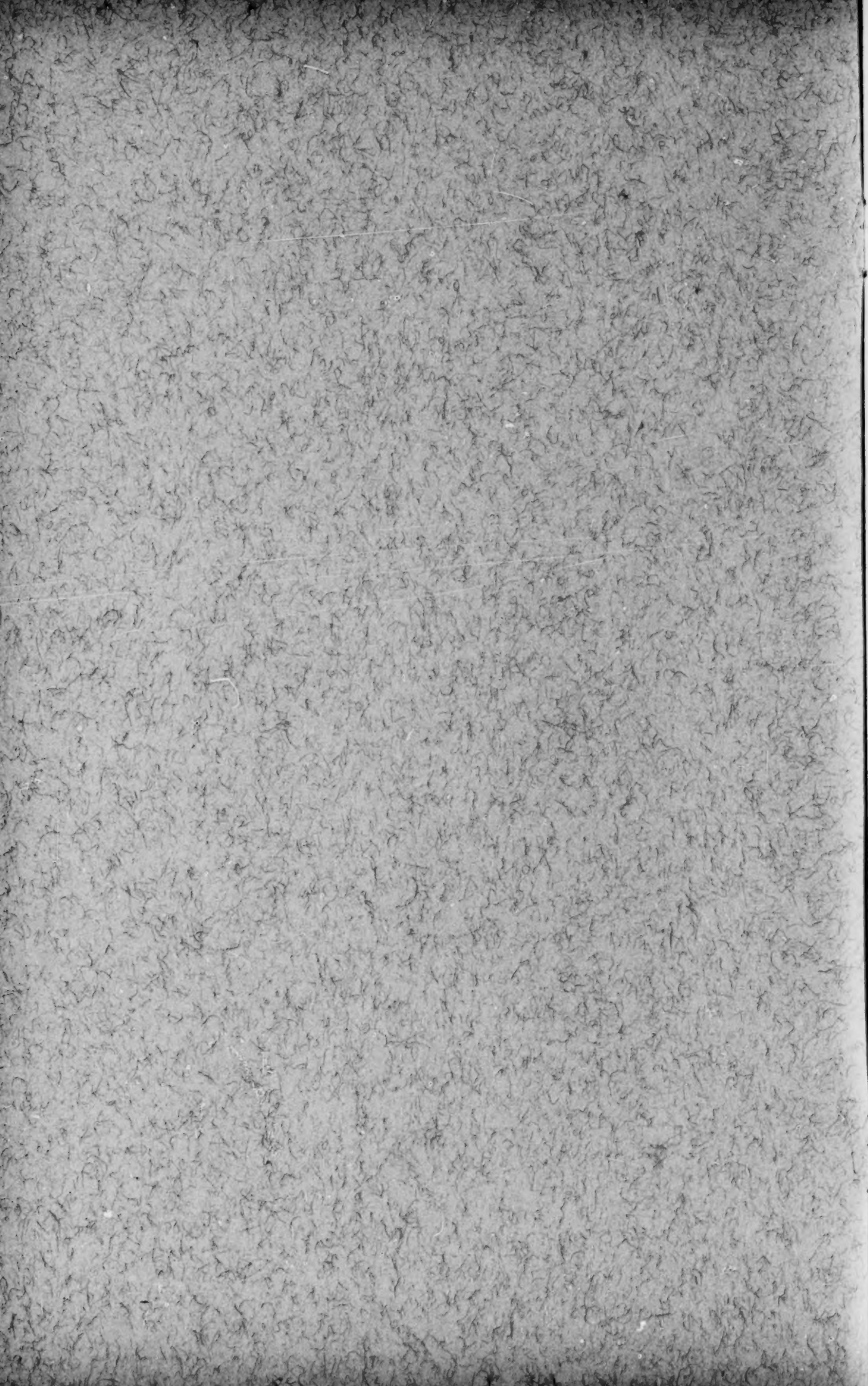


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MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioner contends that disclosure to other government employees of copies of his federal tax returns that were seized by Navy employees in the course of a search of his workplace violated Section 6103 of the Internal Revenue Code.¹

1. Petitioner was employed by the United States Navy as a civilian attorney at the Naval Ocean Systems Center (NOSC), a high-security military complex for weapons and communications research and development. Acting on allegations of misconduct made by petitioner's secretary and his assistant, his supervisor requested an inquiry by the Naval Investigative Service (NIS). Petitioner was informed of the investigation, and he was required to surrender his access badge and to leave NOSC property. Shortly thereafter, petitioner's supervisor, his secretary,

¹ Unless otherwise noted, all statutory references are to the Internal Revenue Code (26 U.S.C.), as amended (the Code or I.R.C.).

his assistant, and another NOSC employee, acting without a warrant or prior authorization, searched petitioner's office and his briefcase. They seized several items, including petitioner's copies of his federal and state personal income tax returns for 1982 and 1983 and some other tax-related information. The copies of the returns and the tax-related information were reviewed by a NOSC employee and disclosed to various NIS agents and other Navy employees, and petitioner was questioned about their contents. His employment was terminated the next day. Pet. App. A2.

2. a. Petitioner brought this suit in the United States District Court for the Southern District of California seeking damages under Section 7431 of the Code, alleging wrongful disclosure of his tax returns and return information in violation of Section 6103 of the Code.² The district court granted the government's motion for summary judgment, ruling that petitioner had failed to state a claim upon which relief could be granted (Pet. App. B1-B6). The court held that the materials seized from petitioner did not fall within the definition of "return" or "return information" in Section 6103. The court explained that Section 6103 covers only returns "filed with the Secretary" (§ 6103(b)(1)) and return information "received by, recorded by, prepared by, furnished to, or collected by the Secretary" (§ 6103(B)(2)(A)). The court concluded that "[t]he prohibition in [S]ection 6103 is directed at those government officers and employees who obtain returns and return information as a result of these materials being filed by or on behalf of the taxpayer, or received by, furnished to, or collected by the Secretary" (Pet. App. B5).

² Petitioner also brought some other lawsuits, including a *Bivens* action (*Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971)), seeking damages and injunctive relief under other legal theories. Pet. App. A2, B1-B2.

Therefore, because the documents and information were not furnished to the IRS, but were obtained by the Navy directly from petitioner through a search of his office, Section 7431 was inapplicable.

b. The court of appeals affirmed (Pet. App. A1-A10). The court ruled that "Section 6103 establishes a comprehensive scheme for controlling the release *by the IRS* of information received from taxpayers to discrete identified parties, subject to specified conditions" (Pet. App. A5 (footnote omitted; emphasis in original)). The court explained that this conclusion followed from the plain language of the statute; "the statutory definitions of 'returns' and 'return information' to which the entire statute relates, confine the statute's coverage to information that is passed through the IRS" (*id.* at A5-A7 (citation and footnote omitted)). On the other hand, the court stated, "there is no indication in either the language of section 6103 or its legislative history that Congress intended to enact a general prohibition against public disclosure of tax information" (*id.* at A7). Accordingly, the court concluded that Sections 7431 and 6103 were inapplicable here because petitioner's returns were not obtained from the IRS (Pet. App. A10).

3. Petitioner contends that the disclosure to other government employees of the materials seized from his office violated Section 6103 of the Code. This contention was correctly rejected by both courts below. The decision of the court of appeals does not conflict with any decision of this Court or of another court of appeals. There is accordingly no reason for review by this Court.

The text of the relevant statutes clearly refutes petitioner's contention. Section 6103(a) states the general rule protecting the confidentiality of tax "returns" and "return information" against disclosure by officers or employees of the United States. Those terms are explicitly defined in

Section 6103(b). A "return" is "any tax or information return * * * which is filed with the Secretary by, on behalf of, or with respect to any person" (§ 6103(b)(1)). "Return information" is defined as various kinds of data "received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return" (§ 6103(b)(2)(A)). Section 7431, which establishes the cause of action for damages arising out of violations of Section 6103, incorporates by reference the definitions contained in Section 6103(b) (see § 7431(c)). It is clear that the materials seized from petitioner's office, including copies of his income tax returns, do not fall within these definitions because they were never filed with or furnished to the Secretary. See *Heathman v. United States District Court*, 503 F.2d 1032, 1035 (9th Cir. 1974). Accordingly, Section 6103 does not govern the circumstances under which those materials can be disclosed to other persons. Their disclosure did not violate Section 6103, and it cannot form the basis for a lawsuit under Section 7431.³

Contrary to petitioner's contention (Pet. 10-13), the policies underlying Section 6103 are fully consistent with the statutory language. Congress substantially expanded the confidentiality protections of that statute in 1976 be-

³ Petitioner attempts to avoid this difficulty by placing great stress on the fact that the confidentiality guarantee of Section 6103(a) applies to all government employees, not merely to IRS employees (see Pet. 9-10). But this language is of no assistance to petitioner. The confidentiality guarantee is limited to the material defined in Section 6103(b). Returns and return information supplied to the IRS can come into the possession of other government employees by way of the disclosures authorized under Section 6103. The recipients of that information are bound by the disclosure limitations of Section 6103, even though they are not IRS employees. But the material at issue in this case does not fall within the definitions in Section 6103(b), and hence it is not covered by the confidentiality guarantee.

cause of concern that the IRS was disseminating too freely the information that it collected from taxpayers. Congress recognized that our voluntary assessment system of taxation is dependent in large part upon taxpayer confidence that the information that they must submit to the IRS will be kept confidential, and therefore it took steps to safeguard the confidentiality of that information while still preserving the opportunity for the government to make legitimate use of it. See S. Rep. 94-938, 94th Cong., 2d Sess. 328 (1976); Staff of the Joint Comm. on Taxation, 94th Cong., 2d Sess., *General Explanation of the Tax Reform Act of 1976*, at 314-315 (Joint Comm. Print 1976). The reasons for the special confidentiality guarantees of Section 6103 therefore come into play when the material has been furnished by the taxpayer to the IRS in connection with its tax collection responsibilities. No purpose would be served by applying the statute to situations like the one in this case where the material is obtained directly from the taxpayer. Indeed, the legislative history specifically noted the focus of Section 6103 on material furnished to the IRS, disclaiming any intention "to limit the right of an agency (or other party) to obtain returns or return information directly from the taxpayer through the applicable discovery procedures" (S. Rep. 94-938, *supra*, at 331). Moreover, as the court of appeals pointed out (Pet. App. A9), if petitioner's contention were accepted, Section 6103 "would become the sole means by which the government could obtain tax information legitimately." Clearly, Congress did not intend Section 6103 to have such widespread application.⁴

⁴ Petitioner's suggestion (Pet. 13-14) that allowing the decision below to stand would countenance an illegal seizure is wholly without merit. Petitioner's contention that he has a remedy in this suit under

Petitioner's assertion (Pet. 15) that the decision below conflicts with *Rodgers v. Hyatt*, 697 F.2d 899 (10th Cir. 1983), is without merit. *Rodgers* involved the legality of a disclosure by an IRS employee of information that was furnished to the IRS by local law enforcement authorities in connection with a tax investigation. It was not even disputed in *Rodgers* that this information was "return information." Rather, the dispute centered on whether the disclosure was nonetheless lawful, either because it was necessary for investigative purposes (§ 6103(k)(6)) or because the information had already become a matter of public record. While we do not agree with the Tenth Circuit's resolution of that latter issue, it is clear that there is no conflict between *Rodgers* and the decision below with respect to the definition of returns and return information.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

APRIL 1988

Section 7431 is unrelated to the allegation of an illegal seizure; petitioner's interpretation of Section 6103 would justify this lawsuit challenging the disclosure even if it were agreed that the seizure was lawful. The focus of Section 6103, after all, is upon the disclosure of material that is lawfully within the possession of the IRS. As the courts below stated (Pet. App. A3, A10, B4), petitioner's remedy if the documents were obtained by means of an illegal search and seizure is a *Bivens* suit, and he has already pursued that remedy.

